IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.M.JAMES

FRIDAY, THE 1ST DECEMBER 2006 / 10TH AGRAHAYANA 1928

WP(C).No. 21408 of 2004(W)

PETITIONER:

JAYARAJAN M., BINDHU BHAVANAM,
PEROOR, KOTTANKARA, KOLLAM.

BY ADV. SRI.S.SANTHOSH KUMAR

RESPONDENTS:

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1. THE JOINT REGISTRAR (GENERAL),
OFFICE OF THE SOCIETIES JOINT REGISTRAR
OF CO-OPERATION, KOLLAM.

2. PEROOR SERVICE CO-OPERATIVE BANK LTD.,
NO.Q.1222, T.K.M.C. P.O., KOLLAM,
REPRESENTED BY ITS PRESIDENT.

BY ADV. SMT.V.P.SEEMANDINI
SRI.M.R.ANISON
SENIOR GOVERNMENT PLEADER SRI.P.N. SANTHOSH

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 01/12/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C).21408/2004

APPENDIX

PETITIONER'S EXHIBITS:-

EXT.P1- TRUE COPY OF LETTER DATED 10.10.2001 ISSUED BY 2ND RESPONDENT.

EXT.P2- TRUE COPY OF EXPLANATION DATED 17.10.2001 SUBMITTED BEFORE THE 2ND RESPONDENT

EXT.P3- TRUE COPY OF LETTER DATED 5.4.2002 FROM ADV.V.R.PRAMOD TO THE PETITIONER.

EXT.P4- TRUE COPY OF LETTER DATED 25.3.2002 OF THE PETITIONER TO THE 2ND RESPONDENT.

EXT.P5- TRUE COPY OF REPRESENTATION DATED 5.1.2004 SUBMITTED BEFORE THE 1ST RESPONDENT.

EXT.P6- TRUE COPY OF LETTER DATED 1.6.2004 OF THE 1ST RESPONDENT.

RESPONDENT'S EXHIBITS:-

EXT.R2(a)- TRUE COPY OF THE WRITTEN UNDERTAKING DATED 21.1.2002.

EXT.R2(b)- TRUE COPY OF THE ORDER SHEET MAINTAINED BY THE ENQUIRY OFFICER SHOWING THE DETAILS OF THE ORDERS ON VARIOUS DATES OF HEARING, AS WELL AS THE SIGNATURE AFFIXED BY THE PETITIONER.

EXT.R2(c)- TRUE COPY OF THE ENQUIRY REPORT DATED 4.6.2002.

EXT.R2(d)- TRUE COPY OF THE COMMUNICATION DATED 28.11.2002.

EXT.R2(e)- TRUE COPY OF THE ACKNOWLEDGEMENT CARD RECEIVED BY THE PETITIONER.

EXT.R2(f)- TRUE COPY OF THE LETTER DATED 4.12.2003.

EXT.R2(g)- TRUE COPY OF THE ACKNOWLEDGEMENT RECEIPT.

(TRUE COPY)

P.A TO JUDGE

J.M.JAMES, J.

W.P.(C). 21408/2004

Dated this 1st day of December, 2006

JUDGMENT

Writ petitioner was the Honorary Secretary of the second respondent, bank, from 22.1.1996. However, he was made a Paid Secretary from 9.3.1998. There were financial irregularities and it was alleged that he had released an amount of Rs.50,000/-, without securing the loan, to his wife. On 9.10.2001, an enquiry was conducted and finding irregularities, he was kept under suspension. Ext.P1 charge memo was issued on 10.10.2001.

2. It is submitted by the second respondent that an amount of Rs.89,043/- was found due to the bank and under Ext.R2(a), the writ petitioner had remitted an amount of Rs.70,000/- undertaking to pay the balance amount, thereafter.

3. The second respondent had appointed an advocate as an Enquiry Officer, after ordering a domestic

enquiry, on 27.2.2002. The petitioner had filed a written statement against the charge, on 12.4.2002. Enquiry stood for consideration on various dates. Then Secretary-in-charge was examined on 15.5.2002. Accordingly, enquiry report was submitted to the bank on 4.6.2002. According to the learned counsel for the second respondent, the same was communicated to the writ petitioner, terminating him from service, as could be seen from Ext.R2(d) dated 28.11.2006. Ext.R2(e) is the acknowledgment card dated 10.12.2002.

4. While the learned counsel for the writ petitioner submit that there was no hearing of the petitioner, showing cause, why a major punishment of termination of service was not to be imposed on the petitioner. The learned counsel for the second respondent, on the other hand, submit relying of Ext.R2 (e), that all the required procedures had been followed and the writ petitioner had received the report of the enquiry officer on 4.6.2002.

5. Ext.P6 is the decision dated 1.6.2004 of the

first respondent disposing of the complaint, preferred by the writ petitioner, and accepting the termination of his service. However, the writ petitioner now challenges that there was no proper procedure followed, before the termination of the petitioner, as required under Rule 198(2) of the Kerala Co-operative Societies Rules, 1969, in short 'the Rules'. The learned counsel for the petitioner also submit that the first respondent, the Joint Registrar, may be directed to consider the entire matter including the procedures that had been followed, before the imposition of a major punishment of terminating the petitioner from the service of the second respondent, bank.

6. The counsel for the second respondent however, submit that the appointment of the petitioner as Paid Secretary was not approved by the Registrar and, therefore, even an enquiry was not warranted. The procedure required to be followed had been completely complied with. Therefore, the petition may be dismissed, submits the counsel.

7. Records are not before me. In the counter, the second respondent had stated that the enquiry report dated 4.6.2002 was communicated to the petitioner, Ext.R2(e) being the acknowledgment card. However, the learned counsel for the petitioner submits that through Ext.R2(e), the second respondent had communicated a matter, in relation to another communication and not relating to the enquiry report of the Enquiry Officer as well as the show cause notice. This fact requires further evidence for entering a finding.

8. I am not entering into any discussion on the merit of the matter. The first respondent had accepted the decision of the second respondent, bank, after examining the records that had been produced before him. However, Ext.P6 does not show, whether the first respondent had examined the complaints of the non-compliance of the procedure, as required under Rule 198 (2) of the Rules.

9. I cannot accept, at this stage, that the appointment of the writ petitioner as Paid Secretary

was not approved by the Registrar and hence no domestic enquiry even need to be conducted. The second respondent had opted to conduct an enquiry through an Enquiry Officer. I find from the records that almost all the procedures for conducting an enquiry had been followed.

10. In the above facts situation, I set aside Ext.P6 order of the first respondent, Joint Registrar. I direct the first respondent to call for the entire records leading to the dismissal of the writ petitioner from service and pass orders afresh, after examining the same under Rule 176 of the Rules. Before passing final orders, the first respondent shall hear both the second respondent and the writ petitioner and consider all their contentions.

11. The above exercise shall be completed within one month from the date of production of a copy of this judgment.

The writ petition is disposed of as above.

J.M.JAMES
JUDGE

mrcs